

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
August 28, 2007 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Michael Redifer, Board member, presided. No other Board members were present.

Joseph Haughwout appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case

Lic = Licensing Application

RF = Recovery Fund Claim

Trades = Tradesmen Disciplinary Case/Application

C = Complainant/Claimant

A = Applicant

R = Respondent/Regulant

W = Witness

Atty = Attorney

Participants

1. East Coast Concrete and Contractors Group
File Number 2006-05167 (Disc)
(NO DECISION MADE)

Victoria Nwaobasi – C

2. Godwin Electrical Services LLC
File Number 2007-02766 (Disc)
(NO DECISION MADE)

Willie Godwin – R
Jon Lindberg – C

3. Mitchell Services Incorporated
File Number 2006-03348 (Disc)
(NO DECISION MADE)

Samuel Joe Mitchell – R
Mike Bishop – R Atty
Terry Reynolds – R
John Keith – C
Alicia Keith – C
Adrian White – C Atty
Danny Rasnake – W
(by telephone)
Eric Hess – W
(by telephone)
Dennis Willis – W
Jackie Stump – W
Linda Stump – W

The meeting adjourned at 3:40 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Jay DeBoer, Secretary

COPY TESTE:

Custodian of Records

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: East Coast Concrete and Contractors Group

File Number: 2006-05167
License Number: 2705087176

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On July 12, 2007, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to East Coast Concrete and Contractors Group ("East Coast") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service ("USPS"), marked "Unclaimed".

On August 28, 2007, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Victoria Nwaobasi ("Nwaobasi"), on behalf of FCW Justice Inc. ("FCW"), Complainant, by telephone; Joseph Haughwout and Jesstina Adelman, Staff Members; and Michael Redifer, Presiding Board Member. Neither East Coast, Respondent, nor anyone on its behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

In March 2006, East Coast entered into a contract with FCW Justice Inc. ("FCW"), in the amount of \$16,600.00, to perform concrete work at the subject property in Richmond, Virginia. FCW hired East Coast as its subcontractor on a project to perform renovations to a car wash business.

Count 1: Board Regulation

The contract provided the work would be substantially completed in fourteen (14) calendar days. East Coast began work on April 5, 2006, making the estimated completion date on or about April 19, 2006. However, as of April 26, 2006, the last day East Coast performed work, it had only performed approximately 25% of the work. Nwaobasi hired a consulting firm to inspect the work done. . . . was not even 25% complete. FCW made numerous attempts over the ensuing two months to get East Coast to complete the project. Although

East Coast made repeated promises to return, it failed to do so. FCW eventually hired another contractor to complete the project. East Coast's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14.

East Coast's conduct in this matter indicates to me that it had no real intention of performing the work. Based on the cost and scope of work, the project would have been relatively simple for a Class A contractor to complete. FCW entered into the contract with East Coast in good faith, expecting the work to be performed. Yet East Coast failed to reciprocate this good faith by completing the work as agreed. FCW was willing to allow East Coast to complete the project, even after it had already failed to meet the contracted completion date, as evidenced by its attempts to get East Coast to return. East Coast not only failed to return, but repeatedly made false promises to return and complete the project. Part of the Board's purpose in regulating members of the profession is to prevent deceptive, misleading, and fraudulent practices. In this case, East Coast has engaged in all of these, and has shown it is not fit for licensure. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 2: Board Regulation

In addition to my recommendation in Count 1:

East Coast not only abandoned the project, but the work it did perform was substantially defective, as evidenced by an inspection performed in May 2006. The inspection report reflects East Coast failed to perform work in accordance with accepted industry standards and its workmanship was generally poor. East Coast's incompetent performing of work shows it had no real intention of completing the project to any reasonably acceptable standard, especially when considered in light of its subsequent abandonment of the project. East Coast did just enough to create the impression it was performing work, and then left FCW responsible for hiring someone else, at additional cost, to correct the defects. East Coast's actions are a violation of Board Regulation 18 VAC 50-22-260.B.5.

I believe East Coast's incompetence was an extension of its deceptive and fraudulent conduct. Based on my rationale in Count 1, it has shown it is not fit for licensure. Therefore, I recommend a monetary penalty of \$1,500.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 3: Board Regulation

In addition to my recommendation in Count 1:

FCW paid East Coast \$8,600.00 toward the contract price of \$16,600.00 (approximately 52% of value). After it only completed 25% of the project, FCW demanded that East Coast

either return to complete the project or provide a partial refund. However, East Coast never returned any money for work it did not complete. East Coast's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16.

East Coast completed proportionally far less of the contracted work than it was paid in advance. Further, the work it did perform was substantially defective. Given these facts, I conclude East Coast never truly intended to honor its contractual obligations, and received payment for little or no service. In my estimation, East Coast committed fraud. Based on my rationale in Count 1, East Coast has shown it is not fit for licensure. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 4: Board Regulation (FOUR VIOLATIONS)

In October 2006, in Richmond General District Court, FCW obtained judgment against East Coast, in the amount of \$5,700.00. According to the record, the judgment has not been satisfied.

Additionally, three other litigants obtained judgments against East Coast, all of which appear to be unpaid. They are as follows:

- TCS Materials Inc. – \$1,553.49, obtained in Richmond General District Court in January 2007.
- Tidewater Quarries – \$1,028.07, obtained in Richmond General District Court in February 2007.
- Mechanicsville Concrete – \$7,261.45, obtained in Henrico General District Court in May 2007.

East Coast's actions are violations of Board Regulation 18 VAC 50-22-260.B.28.

The Board requires Class A contractors, such as East Coast, to possess minimum equity in order to hold a license. This is meant to ensure the licensee is able to reasonably assume liabilities associated with performing contracting. Further, the Board has an interest in ensuring licensees are able to meet their basic financial obligations to consumers and suppliers. The privilege of being granted a license carries with it the responsibility on the part of the licensee to honor these obligations.

The record reflects East Coast owes a combined amount of \$15,543.01 to a consumer and material suppliers. As a Class A contractor, East Coast should have more than sufficient equity to satisfy these debts. Its failure to satisfy them shows it either lacks the ability to pay them or has elected not to satisfy them. In the first instance, failure to pay judgments shows the licensee may no longer possess the required equity, and therefore the required financial stability, to hold its license. In the second instance, the failure to pay shows a disregard for its obligations as a licensee and is indicative of dishonest intentions. In either case, the harm to the public is substantial in that the Board has no assurance East Coast will not

continue to take from consumers and businesses, and then fail to honor its end of the transaction. East Coast's actions show it is no longer fit for licensure.

Therefore, I recommend a monetary penalty of \$500.00 and license revocation for each violation, for a total of \$2,000.00 and license revocation, be imposed.

Count 5: Board Regulation

During the investigation, the investigator made multiple attempts to contact East Coast by mail and telephone in order to obtain a response to the complaint. East Coast received the investigator's letter, and yet still failed to respond. East Coast's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13.

East Coast's failure to respond to the investigator is a serious violation of the Board's regulations, as it impairs the Board's ability to fully investigate complaints. It is the obligation of a licensee to fully cooperate with the Board when it attempts to investigate complaints. The facts of this case indicate that East Coast elected not to respond to the investigator's attempts to contact him, and thereby not comply with the Board's regulations, which I find to be an aggravating circumstance.

Therefore, I recommend a monetary penalty of \$1,000.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

By: _____
Michael Redifer
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN NINETY (90) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN NINETY (90)

DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATIONS DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: February 8, 2007 (revised April 9, 2007 and July 11, 2007)

FILE NUMBER: 2006-05167
RESPONDENT: East Coast Concrete and Contractors Group
LICENSE NUMBER: 2705087176
EXPIRATION: October 31, 2008

SUBMITTED BY: Investigator Christopher Dodson
APPROVED BY: Assistant Director Sheon Rose

COMMENTS:

None

East Coast Concrete and Contractors Group ("East Coast") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705087176).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On May 31, 2006, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Victoria Nwaobasi ("Nwaobasi"), on behalf of FCW Justice Inc., regarding East Coast. (Exh. C-1)

On March 30, 2006, East Coast entered into a written contract, in the amount of \$16,600.00, with FCW Justice Inc. to lay a concrete slab on grade with trench extension and pits, steel reinforcement and steel angles, grouting and other materials to complete the concrete work at 6838 Midlothian Turnpike, Richmond, Virginia 23225. The contract specified that the job was to be substantially complete in 14 calendar days. (Exh. C-1 and C-2)

1. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: February 1, 2006

FACTS:

On April 5, 2006, East Coast commenced work. (Exh. I-8)

The last day East Coast performed work at the subject property was on or about April 26, 2006. (Exh. I-8)

For approximately two months after East Coast stopped work, Nwaobasi contacted East Coast numerous times by phone requesting East Coast to remediate the problems with the work or return a portion of the deposit money. East Coast promised to return to the job, but never did. (Exh. I-7)

As of April 26, 2006, only 25% of contracted work had been performed by East Coast. (Exh. I-7, I-8)

On or about mid-June 2006, Nwaobasi hired another contractor to correct and complete the concrete work that East Coast was contracted to perform. (Exh. I-8)

2. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: February 1, 2006

FACTS:

In addition to the facts outlined in Count 1:

On May 8, 2006, Darrell Darrow ("Darrow") of CTI Consultants Inc. performed an inspection of the subject property. In a report dated May 23, 2006 (Note: the letter is dated incorrectly as May 23, 2008), Darrow outlined numerous deficiencies in the work East Coast performed, including but not limited to the following:

- Concrete out of plane by 1.25 inches in 10 feet (default per American Concrete Institute is +/- .75 from design grade plane).
- At opposite ends of trenching, left is humped and right is dipped.
- Stone base is at higher elevation than trench floor leaving void at intersection.
- Concrete brittle and will deteriorate at an accelerated rate. (Exh. C-4)

3. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: February 1, 2006

FACTS:

In addition to the facts outlined in Count 1:

On April 7, 2006, Nwaobasi paid East Coast \$8,600.00 by check. (Exh. C-3)

As of April 26, 2006, East Coast had completed approximately 25% of the contracted work. (Exh. I-8)

During the months of May and June 2006, Nwaobasi made numerous requests for East Coast to return and remediate their work or return a portion of the deposit. East Coast made promises to return to the job, but they never did. (Exh. I-7)

As of February 7, 2007, East Coast failed to refund money received for work not performed or performed only in part. (Exh. I-7)

4. Board Regulation (FOUR VIOLATIONS)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: February 1, 2006

FACTS:

On October 11, 2006, in the City of Richmond General District Court, FCW Justice Inc was awarded a \$5,700.00 judgment against East Coast. The judgment award was based on a contract issue. (Exh. I-5)

On January 19, 2007, in the City of Richmond General District Court, TCS Materials Inc. was awarded a \$1,553.49 judgment against East Coast. The judgment award was based on an open account and noted that fraudulent use of a credit card was involved. (Exh. I-5)

On February 16, 2007, in the City of Richmond General District Court, Tidewater Quarries Inc. was awarded a \$1,028.07 judgment against East Coast. (Exh. I-5)

On May 21, 2007, in the Henrico County General District Court, Mechanicsville Concrete Inc. was awarded a \$7,261.45 judgment against East Coast. The judgment award was based on breach of contract. (Exh. I-5)

As of June 1, 2007, East Coast failed to satisfy the judgments. (Exh. I-5)

5. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: February 1, 2006

FACTS:

On July 24, 2006, Christopher Dodson ("Dodson"), the Board's agent, sent a written request, via certified mail, to East Coast at the address of record of 11444 Georgetown Road, Mechanicsville, Virginia 23116, requesting a written response and supporting documents to the complaint filed with the Board. Dodson requested the response be received by August 16, 2006. (Exh. I-9)

On July 26, 2006, the United States Postal Service ("USPS") certified that mail is delivered to East Coast at the address of record. (Exh. I-3)

On July 26, 2006, the certified mail was signed for and received. (Exh. I-2)

On October 6, 2006, Dodson contacted East Coast and left a message related to its failure to respond to the Board's inquiry. (Exh. I-6a)

On February 6, 2007, Dodson attempted to call East Coast at several known telephone numbers, none of which were operational. (Exh. I-6b)

As of February 8, 2007, East Coast has failed to respond to an investigator seeking information in the investigation of a complaint filed with the Board.

IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS

Re: Godwin Electrical Services LLC

File Number: 2007-02766
License Number: 2705084060

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On July 5, 2007, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Godwin Electrical Services LLC ("Godwin Electrical") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service ("USPS"), marked "Forwarding Order Expired." However, on August 22, 2007, Willie Godwin came to the Department of Professional and Occupational Regulation ("Department") to pick up said Notice.

On August 2, 2007, the Notice was mailed, via certified mail, to Godwin at 1108 Main Street, West Point, Virginia 23181. The certified mail was marked as _____.

On August 28, 2007, an Informal Fact-Finding Conference ("IFF") was convened at the Department.

The following individuals participated at the IFF: Willie Godwin ("W. Godwin"), Respondent; Jon Lindberg ("Lindberg"), Complainant; Joseph Haughwout and Jesstina Adelman, Staff Members; and Michael Redifer, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

In December 2006, Godwin Electrical entered into an agreement with Lindberg, in the amount of \$2,100.00, to perform electrical work at the subject in property in Gloucester, Virginia. Godwin Electrical provided Lindberg with a written invoice which acted as the contract between the parties.

Count 1: Board Regulation

According to the record, at the time the contract was agreed to Godwin's Electrical Class C contractor's license was in a suspended status. During the investigation, W. Godwin stated, he was unaware that his license had been suspended since July 11, 2006, but nonetheless acknowledged he should have known the same. Shortly after speaking with the investigator, the license was reinstated.

The record reflects Godwin Electrical's license was suspended because it previously tendered a bad check. Based on his statements and prompt resolution of the problem after being notified, I believe Respondent's practicing with a suspended license was an oversight, rather than a deliberate attempt to disregard the Board's authority. Nonetheless, it was W. Godwin's responsibility to make sure his license was in good order in the first place.

Godwin Electrical's practicing with a suspended license is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$750.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 2: Board Regulation

The contract used by Godwin Electrical reflected the name Willie Godwin—Godwin Electric, which is not the licensed name of the company. The correct name of the company is Godwin Electrical Services, L.L.C. Godwin Electrical's failure to operate in the name in which its license was issued is a violation of Board Regulation 18 VAC 50-22-230.A.

Although this may be seen as a technicality, a licensee's operating in a name other than licensed can create confusion as to with whom the consumer contracted. As the Board issues licenses to firms, rather than persons, this may create problems should the consumer desire to hold the licensee accountable for any malfeasance, either to the Board or to a civil court. Therefore, I recommend a monetary penalty of \$250.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 3: Board Regulation

The contract between Godwin Electrical and Lindberg was not signed by either party. The Board requires that contracts be signed by both the consumer and the licensee so that the terms of the agreement are acknowledged by both parties. Failure on the part of the licensee to fully execute the contract may leave the validity of the contract open to question.

This regulation not only protects the consumer from unscrupulous or fraudulent practices, but also protects the licensee should a dispute arise over what was agreed. Godwin Electrical's failure to fully execute the contract is a violation of Board Regulation 18 VAC 50-22-260.B.8.

Therefore, I recommend a monetary penalty of \$350.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 4: Board Regulation

The contract used by Godwin Electrical in the transaction failed to include subsections a., b., d., e., f., h., and i., as required by the regulation. During the investigation, W. Godwin admitted he was unaware of the contract requirements. Although he agreed to provide a revised contract that was compliant with the regulation, he failed to do so.

It appears W. Godwin does not fully understand the requirements of the Board's regulations in relation to the minimum provisions to be included in a contract. Although this is a technicality, as the Board has seen in the past, the impact of failing to include some provisions can have a greater impact than anticipated by the parties to the contract. The purpose of including these provisions is to protect both the contractor and the consumer, and failure to do so, is poor business practice.

Godwin Electrical's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9.

Therefore, I recommend a monetary penalty of \$250.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 5: Board Regulation

W. Godwin performed the electrical work in December 2006, but failed to obtain a permit for the electrical work. Lindberg subsequently obtained the permit himself in January 2007. During the investigation, W. Godwin admitted he did not obtain a permit prior to performing the work, and acknowledged he should have done so.

Godwin Electrical's failure to obtain a required electrical permit is a violation of Board Regulation 18 VAC 50-22-260.B.6.

The record reflects W. Godwin has been licensed as a master tradesman electrician since March 2004, and his company has been licensed since April 2004. Given this information, I find it highly unlikely W. Godwin was not aware he needed a permit. In fact, his statements to the investigator imply otherwise. W. Godwin never provided an explanation his failure to obtain the permit.

In certain circumstances, the USBC requires building permits be obtained and inspections be performed. This provides protection and assurance that the work performed by the contractor is quality workmanship and will not be harmful to citizens. By not obtaining required permits, there is no assurance that the work performed by the contractor is in compliance with the USBC. This is especially so when the type of work being performed is particularly dangerous, as is true of electrical work. W. Godwin left the project in an unsafe state, as evidenced by the rejected electrical inspection. This was highly irresponsible and left Lindberg to assume the responsibility of obtaining compliance with the building code.

Therefore, I recommend a monetary penalty of \$1,000.00 and remedial education/license revocation be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 6: Board Regulation

During the investigation, the investigator requested W. Godwin produce a copy of the contract he used in the transaction, to which he agreed. The investigator made follow-up attempts to obtain the contract, including a personal visit to Godwin Electrical's business address. However, Godwin Electrical failed to produce the document as promised. Godwin Electrical's failure to produce the contract requested by the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.12.

Godwin Electrical's failure to provide requested documents to the investigator is a serious violation of the Board's regulations, as it impairs the Board's ability to fully investigate complaints. It is the obligation of a licensee to fully cooperate with the Board when it attempts to investigate complaints. The facts of this case indicate that Godwin Electrical elected not to respond to the investigator's attempts to contact him, and thereby not comply with the Board's regulations, which I find to be an aggravating circumstance.

Therefore, I recommend a monetary penalty of \$350.00 remedial education/license revocation be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

By: _____

Michael Redifer
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN NINETY (90) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN NINETY (90) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATIONS DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: February 22, 2007 (revised March 6, 2007, and June 27, 2007)

FILE NUMBER: 2007-02766
RESPONDENT: Godwin Electrical Services, LLC
LICENSE NUMBER: 2705084060
EXPIRATION: April 30, 2008

SUBMITTED BY: Inv. Ernie Atkins
APPROVED BY: Field Supervisor Valerie Matney

COMMENTS:

On March 9, 2004, Willie Arcelious Godwin, Jr. was issued tradesman certificate number 2710035836, with designation as a master electrician.

Godwin Electrical Services, LLC ("Godwin Electrical") was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705084060).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On January 11, 2007, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Jon W. Lindberg ("Lindberg") regarding Willie Godwin ("Godwin") and Godwin Electrical. (Exh. C-1)

On December 8, 2006, Willie Godwin-Godwin Electric provided a written invoice ("contract"), in the amount of \$2,100.00, to Lindberg to perform electrical work at 4363 Wigeon Circle, Gloucester, Virginia 23061. (Exh. C-2 and I-3)

On December 19, 2006, Linberg paid Godwin \$1,000.00. On December 26, 2006, Lindberg paid Godwin \$1,100.00. The payments were made as loan disbursements from Lindberg's home equity line of credit. (Exh. C-3)

On April 7, 2004, Godwin Electrical was issued Class C contractor's license number 2705084060 as a limited liability company. Willie A. Godwin, individual tracking number 2706137411, is the Qualified Individual, and Responsible Management for license number 2705084060. (Exh. I-1)

1. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: February 1, 2006

FACTS:

On July 11, 2006, license number 2705084060 was suspended. (Exh. I-1 and I-5)

On January 23, 2007, Godwin stated he was unaware the contractor's license for Godwin Electrical had been suspended on July 11, 2006. However, Godwin acknowledged he should have known the same. (Exh. I-3)

On January 26, 2007, license number 2705084060 was reinstated. (Exh. I-1)

2. Board Regulation

18 VAC 50-22-230. Change of name or address.

A. A licensee must operate under the name in which the license is issued. Any name change shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name.

Historical Notes:

Derived from VR220-01-2:1 §5.4, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: February 1, 2006

FACTS:

The contract used by Godwin Electrical in the transaction reflected the trading name Willie Godwin – Godwin Electric. (Exh. C-2)

On January 23, 2007, Godwin admitted that the invoice should have reflected the licensed name of the company. (Exh. I-3)

3. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: February 1, 2006

FACTS:

The contract was not signed by Godwin Electrical or by Lindberg. (Exh. C-2)

4. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license number, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001; Volume 22, Issue 8, eff. February 1, 2006

Print Date: February 1, 2006

FACTS:

The contract used by Godwin Electrical in the transaction failed to contain subsections: a., b., d., e., f., h., and i. (Exh. C-2)

On January 23, 2007, Godwin admitted he was unaware of the Board's minimum contract requirements and agreed to provide a correct copy of his contract form within one week. (Exh. I-3)

As of February 16, 2007, Godwin failed to provide a revised contract form. (Exh. I-3)

5. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: February 1, 2006

FACTS:

In December 2006, Godwin performed electrical work at the subject property. (Exh. C-1, I-2, and I-3)

On January 3, 2007, Lindberg obtained an electrical permit as the homeowner. (Exh. I-6)

On January 23, 2007, Godwin confirmed that he did not secure an electrical permit from Gloucester County prior to initiating or after finalizing his work. Godwin admitted he should have done so. (Exh. I-3)

On January 24, 2007, Paul Koll ("Koll"), Building Official for Gloucester County, stated that no permits for the subject property had been obtained by Godwin or Godwin Electrical. (Exh. I-6)

Godwin performed electrical work at the subject property without an electrical permit in place. (Exh. I-2, I-3 and I-6)

6. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: February 1, 2006

FACTS:

On January 23, 2007, Investigator Ernie Atkins, the Board's agent, made a verbal request to Godwin to produce a copy of the contract used in the transaction no later than January 29, 2007. Godwin agreed, but failed to produce the invoice. (Exh. I-3)

On February 5, 2007, the Board's agent sent a written request, via certified and regular mail, to Godwin Electrical at the address of record of 1108 Main Street, West Point, Virginia 23181, requesting a copy of the contract used in the transaction. The Board's agent requested the document be received by February 13, 2007. (Exh. I-7)

On February 15, 2007, the Board's agent made a personal visit to the address of record of 1108 Main Street, West Point, Virginia 23181. The Board's agent observed an exterior sign that identified the location as Godwin Electrical. There was no answer at the door and a copy of the aforementioned written request was posted thereon. (Exh. I-3)

As of February 16, 2007, Godwin Electrical refused or failed to produce to the Board's agent a document concerning the transaction. (Exh. I-3)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Mitchell Services Incorporated

File Number: 2006-03348
License Number: 2705071442

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On May 23, 2007, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Mitchell Services Incorporated ("Mitchell Services") to the address of record. The Notice was also mailed, via certified mail, to Michael A. Bishop, Esq. ("Bishop"), attorney for Mitchell Services at 180A East Main Street, P.O. Box 2557, Abingdon, Virginia 24212. The certified mailings were received.

The Notices included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter.

On June 25, 2007, Bishop requested the Informal Fact-Finding Conference ("IFF") be continued. The request for continuance was granted. A letter rescheduling the IFF was mailed, via certified mail, to Bishop at 180A East Main Street, P.O. Box 2557, Abingdon, Virginia 24212. The letter was also mailed, via certified mail, to Mitchell Services at the address of record. Both certified mailings were received.

On August 28, 2007, an IFF was convened at the Department of Professional and Occupational Regulation. ***The record was left open for 10 days following the date of the IFF.***

The following individuals participated at the IFF: Samuel Joe Mitchell ("Joe Mitchell") President of Mitchell Services, Respondent; Mr. Terry Reynolds, Vice President of Mitchell Services; Michael A. Bishop, Attorney for Respondent; John and Alicia Keith ("the Keiths"), Complainants; Adrian White, Attorney for Complainant (present by telephone); Jackie and Linda Stump ("the Stumps"), Witnesses; Dennis Willis ("Willis"), Professional Engineer, Witness; Eric Hess ("Hess") Professional Engineer and Danny Rasnake ("Rasnake"), HVAC specialist, Witnesses (mutually by telephone); Joseph Haughwout and Jesstina Adelman, Staff Members; and Michael Redifer, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

In March 2005, Mitchell Services entered into a contract with the Keiths, in the amount of \$184,000.00, to construct a house at the subject property in Abingdon, Virginia.

(Note: the parties are currently involved in civil litigation in Washington Count Circuit Court.)

Count 1: Board Regulation

The contract used by Mitchell Services in the transaction failed to contain subsections b., c., and h. (contractor's license expiration date and classifications or specialty services), as required by the regulation.

Mitchell Services failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$350.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 2: Board Regulation

Although the contract specified that any changes to the contract would be made in writing and signed by all parties, and further provided that any changes to the scope of work would be made by written change order, during the project the scope of work was modified without use of change orders.

Specifically, the parties agreed to add a 209 sq. ft. addition to the construction plans and expanded the garage. The additional square footage added to the price of the contract. According to Mitchell, this additional space was added after the original contract was agreed and its cost was not factored into the contract price. Later in the project, Mitchell Services advised the Keiths the cost of construction would increase to account for the extra space, an estimated cost of \$20,232.00. The Keiths dispute Mitchell's claim that the extra space was added after the contract was agreed, but rather was part of the original agreement.

While it is not entirely clear whether the additional space was included in the original scope of work before the contract was signed, it is clear Mitchell Services did not account for the additional space when estimating the project. When did R first become aware of space issue? When Mitchell Services became aware of mistake, it should have approached the Keiths to modify the contract price. Instead, Mitchell Services invoiced the Keiths for the additional amount.

Mitchell Services also claims cost overruns for labor and materials in the approximate amount of \$18,000.00. Mitchell blames the overruns largely on increased materials costs following Hurricane Katrina.

The Keiths had an expectation the construction would not exceed the estimated cost of \$184,000.00. They started to become suspicious of cost overages in November 2005, about seven months into the project. When they inquired to Mitchell Services regarding possible overages, they claim the company became elusive and would not provide an explanation for the added costs. I believe this evasiveness shows Mitchell Services likely knew the project was exceeding its estimated cost.

In the construction industry cost overruns can and do occur. A responsible builder would have been upfront about with its customer about the increased costs and proposed a written modification to the contract, rather than simply billing the client later.

The purpose of this particular regulation is to memorialize agreements between the parties that are established outside of the original contract. The use of change orders provides written proof and assurance that the parties agree with all aspects of such modifications, including scope and cost. Failure to obtain and use written change orders helps prevent cost overruns and financial disputes that are common in the contracting industry. If this regulation did not exist, the harm to both the contractor and consumers would be inevitable. Contractors who, upon request of the consumer, performed additional work without proper documentation could be denied the opportunity to collect additional monies. Meanwhile, contractors may modify the contractual agreement without the consumer's knowledge and require consumers to absorb the extra cost.

Mitchell Service's failure to obtain signed written change orders is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend a monetary penalty of \$750.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 3: Board Regulation

During the project, the Keiths noticed cracks in the basement concrete slabs and foundation wall. In February 2007, Keiths hired Eric Hess, P.E. ("Hess") to inspect the cracks. Hess determined the crack in the slab was because it was constructed without saw-joints, which resulted in stress-relief cracking. Hess also determined the foundation walls were inadequately reinforced and not in compliance with the building code, causing lateral pressure on the foundation walls. (see Exh. C-13) Mitchell disputes Hess's findings and claims the walls comply with the building code because it was not intended for backfill exceed 8 feet on the exterior wall, meaning no rebar and poured concrete were required. Mitchell did not recall if the slab incorporated saw-joints. During the investigation, Mitchell expressed his desire to have a second engineer inspect the concrete work.

In addition to the concrete defects, after the HVAC system was installed, a subsequent inspection revealed several problems with the installation. Specifically, the duct work did not

conform to industry standards. The return ducts were improperly sized, the supply air system was not properly sealed or cross-broke to ensure proper air flow, and balancing dampers were not present to balance the system.

****Both Willis and Hess differed in the conclusions of the seriousness and significant of the cracks in the wall. Neither party conducted soil tests to determine the cause of the cracks.**

Therefore, I recommend a finding of no violation for Count 3. . . of Board Regulation 18 VAC 50-22-260.B.6. I believe Mitchell should have repaired the crack masonry to satisfy the client; however, failure to do so does not constitute misconduct in this case.

Count 4: Board Regulation

Mitchell Services last performed work at the subject property in late December 2005, after which it removed its materials and equipment. The Keiths claim Mitchell Services abandoned the project after they demanded an accounting of the project after it was determined it was off-budget. According to the Keiths, the project was only 63% complete, yet they had paid almost 84% according to their financial institution, of the contract price. They did not terminate Mitchell Services.

Mitchell acknowledges his company stopped work on the project, but did so because the Keiths failed to pay three invoices. In Mitchell's view, this is simply a contract dispute.

Since Mitchell Services has admitted to ceasing work on the project, the question the Board must answer is whether the work stoppage was justified. Mitchell Services claims it is owed money for construction work it performed, while the Keiths claim they have overpaid for work completed. Mitchell justifies this on the basis of material costs increases and failure to account for additional square footage added to the scope of work. In my view, had Mitchell Services addressed these problems when they first presented themselves, I believe much of the trouble associated with completion of the project could have been avoided. The record reflects the Keiths were repeatedly assured the project was on budget, when it was clearly not. The contract provided for increase in costs, based on fluctuations in materials and labor. It is not evident that Mitchell Services acted appropriately to communicate said increase costs in a timely manner.

Mitchell, in effect, is asking for the Keiths to pay for its mistakes and its failure to act in a timely manner. Mitchell has an obligation to complete the work it contracted under the terms of that agreement. Its cessation of work is not justified by the facts.

Insert reason(s) for finding of no violation. Therefore, I recommend Count 4 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.14.

The business relationship between Mitchell services and the Keiths deteriorated because of discrepancies over the increasing costs of the project. Mitchell Services cessation of

work can reasonably be seen as a necessary step to protect his financial interests, mitigating circumstances make this a justifiable reason to cease work on the Keith home.

Mitchell Services should have been keeping the Keiths apprised of all developments regarding change orders, inconsistencies over square footage and etc.

By: _____
Michael Redifer
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN NINETY (90) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN NINETY (90) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATIONS DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: April 25, 2006 (revised May 22, 2007)

FILE NUMBER: 2006-03348
RESPONDENT: Mitchell Services Incorporated
LICENSE NUMBER: 2705071442
EXPIRATION: September 30, 2008

SUBMITTED BY: Jeffrey Buckley, Investigator
APPROVED BY: Janet Creamer, Field Supervisor

COMMENTS:

On March 2, 2007, Mitchell Development LLC was issued Class A contractor's license number 2705113600 as a limited liability company. Samuel J. Mitchell, individual tracking number 2706069130, is the Responsible Management, Designated Employee, and Qualified Individual for license number 2705113600.

The parties are currently involved in civil litigation in Washington County Circuit Court.

Mitchell Services Incorporated ("Mitchell Services") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705071442).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On January 3, 2006, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from John and Alicia Keith ("the Keiths") regarding Mitchell Services. (Exh. C-1)

On March 22, 2005, Mitchell Services entered into a written contract, in the amount of \$184,000.00, with the Keiths to construct a new house at lots 50-53, Webb Drive, Abingdon, Virginia 24210. (Exh. C-2)

On May 6, 2005, Mitchell Services commenced work. (Exh. I-1)

On June 15, 2005, the Keiths paid Mitchell Services \$14,321.14 by check. On July 21, 2005, the Keiths paid Mitchell Services \$9,832.23 by check. On July 21, 2005, the Keiths paid Mitchell Services \$28,000.00 by check. On August 13, 2005, the Keiths paid Mitchell Services \$34,456.33 by check. On September 13, 2005, the Keiths paid Mitchell Services \$34,111.58 by check. On October 21, 2005, the Keiths paid Mitchell Services \$20,115.02 by check. On November 21, 2005, the Keiths paid Mitchell Services \$13,362.10 by check. (Exh. C-11)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
 - c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contract used by Mitchell Services in the transaction failed to contain subsections: b. and c. The contract also failed to include the contractor's license expiration date and classifications or specialty services as required by subsection h. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

The contract specified:

“Any changes made to this contract shall be made in writing and shall be signed by all parties. Owner may make changes to the scope of work including changes to the plans and specifications from time to time during the construction of the Project. However, any such change or modification shall be made by a written ‘Change Order’, approved by Owner in writing specifying the changes.” (Exh. C-2)

The contract also specified:

“The estimated initial amount of this contract to paid to the Builder by the Owner under the original terms of this agreement will be one-hundred-eighty-four (\$184,000 (the ‘Project Price’) which includes all costs of the Project, including, but not limited to, labor and materials, \$18,000.00 construction coordination fee... This price is subject to change based upon actual material and labor costs and Builder agrees to notify Owner immediately if at any time and for any reason Builder foresees the Project Price exceeding one hundred eighty four thousand.” (Exh. C-2)

The contract also specified, “Exterior walls shall be vinyl.” (Exh. C-2)

On or about March 23, 2005, Mitchell Services and the Keiths agreed to add a 200 square foot addition to the construction plans. (Exh. I-4)

During construction, Mitchell Services installed brick siding in place of vinyl siding on the front façade of the garage. Mitchell Services did not use a written change order. (Exh. I-2 and I-4)

On December 23, 2005, Terry McReynolds (“McReynolds”), on behalf of Mitchell Services, informed the Keiths the construction of the house would require approximately an additional \$50,000.00. (Exh. C-1)

On December 28, 2005, Alicia Keith met with Joe Mitchell (“Mitchell”) and McReynolds, on behalf of Mitchell Services. Mitchell and McReynolds told Alicia Keith they had not figured the extra two hundred square feet that had been added after the contract was signed. (Exh. I-1)

On or about December 29, 2005, Mitchell Services provided the Keiths with a written estimate indicating the new cost to construct the house was \$230,836.40. (Exh. C-9, I-2, and I-4)

On January 3, 2006, McReynolds provided the Keiths with a list of cost overruns on the project, in the total amount of \$38,105.00. The list indicated an additional cost of \$20,232.00 for increasing the size of the house, basement, and garage. (Exh. C-9)

On March 29, 2007, Mitchell acknowledged a written change order was not used for the additional 200 square feet added to the plans. Mitchell further stated a 15% increase in material costs increased the construction price. (Exh. I-4)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On June 29, 2005, the basement floor was poured. (Exh. I-3)

In September 2005 the Keiths noticed large cracks had developed in the basement concrete floor slab. (Exh. I-3)

In November 2005, a heat pump, duct system, copper electrical wiring, outside heat/wire, thermostat cable, and two air returns were installed. (Exh. R-7)

On December 13, 2005, the Keiths noticed a large crack in the basement foundation wall. (Exh. I-2)

In a report dated March 13, 2006, Danny Rasnake, Project Manager for Comfort Systems USA, outlined deficiencies found with the installed HVAC system, including:

- Duct system not designed according to the Sheet Metal and Air Conditioning Contractors National Association (SMACNA);
- The return duct system does not meet American Society of Heating, Air-Conditioning Engineers (ASHRAE);
- The return air duct system was fabricated using sub-standard materials and sized too small for the proper air flow required to serve the air handling system;
- The supply air system was not properly sealed or cross-broke to insure proper air flow; and
- No balancing dampers are present to properly balance the system. (Exh. C-5)

On February 14, 2007, Eric C. Hess, P.E. ("Hess") performed an inspection of the subject property. In a report dated March 12, 2007, Hess outlined the following observations:

- The basement concrete floor slab was constructed without the incorporation of saw-joints, which caused stress-relief cracking.
- The cracks in the foundation wall are the result of "applied lateral pressures that have exceeded the strength of the walls." Hess further noted that the 2003 International Building Code requires wall exceeding nine feet in height to be designed by an engineer and "would have required #7 vertical reinforcing bars spaced at 48 inches on center or #6 vertical bars spaced at 24 inches on center." Hess indicated that the cracks in the foundation wall "could result in a sudden collapse of the walls in the future". (Exh. C-13)

On March 29, 2007, Mitchell stated he disagreed with the engineer's report and intends to have a second engineer inspect the basement walls and concrete slab floor. Mitchell stated back-fill was not placed against the exterior of the wall. Mitchell and McReynolds intended to grade the back-fill down to the base of the wall and incorporate wells to properly drain water around the wall. Mitchell and McReynolds further stated that because the wall was not originally intended to have back-fill exceed 8 feet on the exterior of the wall, re-bar and poured concrete were not required, and thus the wall complies with the building code. They could not recall if saw-joints were incorporated into the concrete sub-floor, or if an engineer designed the basement concrete wall. (Exh. I-4)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

The last day Mitchell Services performed work at the subject property was December 23, 2005. (Exh. C-1 and I-1)

On January 11, 2006, January 17, 2006, and on January 18, 2006, Mitchell Services removed materials and equipment from the subject property. (Exh. C-1, C-3, and I-2)

As of March 3, 2006, the house was 63% complete. (Exh. C-3 and C-12)

In a written response dated April 20, 2006, Nancy C. Dickenson, attorney for Mitchell Services, stated Mitchell Services did not abandon the project. The Keiths advised they were seeking financing to obtain capital to complete the project. Work was suspended because the Keiths failed to pay three invoices. (Exh. R-1)

As of February 7, 2007, Mitchell Services failed to complete:

- No upstairs electrical fixtures
- Drywall incomplete
- Incomplete electrical wiring in basement
- No plumbing fixtures
- Unfinished floors
- deck railing not installed
- tile-work not installed
- front porch not installed
- floor slab in garage not poured
- interior doors not installed
- trim work not installed
- gutters not installed
- shutters not installed
- sidewalk not installed
- driveway not installed
- basement insulation not installed
- interior painting never started
- interior stair handrails not installed
- exterior air conditioning compressor not installed
- exterior vinyl siding incomplete
- septic connection never made
- underground power supply never connected. (Exh. I-2)